IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE SIDE

WRIT PETITION NO.9153 OF 2004

Smt.Shantabai Jankiram Damare. ...Petitioner.
Vs.
Smt.Sindhubai Waman Deshmukh &Ors. ...Respondents.
....
Mr. S. G. Karandikar for the Petitioner.
Mr. P. N. Joshi for Respondent No.1 to 7.
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CORAM : DR.D.Y.CHANDRACHUD, J.

June 17, 2005.

P.C.:

The Additional District Judge, Nasik, while allowing the appeal of the landlord decreed the suit for eviction on the ground that the premises are required by the landlord reasonably and bonafide for occupation of the landlord and the members of his family. The Appellate Court has noted that the premises in question are in the nature of an old *Wada* which came to be purchased by the landlord in 1982. The house was in the occupation of four tenants at the time of its purchase. The case of the landlord was that out of the rooms that were in his occupation,

only two rooms were fit for occupation and that the rooms which were situated on the third floor of the old house were in fact, unusable as the walls are damaged and as a result of which they were supported by wooden poles. The roof of the house was covered by clay tiles and as was conventional in the case of such construction, the roof sloped on two sides. The Appellate Court has accepted the testimony of the landlord that the third floor is essentially a “sub-floor” or an attic which does not have even the usual height of a regular floor. The Appellate Court was, in my view, quite correct in holding that the landlord could not be compelled to continue to reside in such rooms as are in his possession even though, by the nature of the construction and position, those rooms are not capable of reasonable habitation. The finding of fact is that out of eight rooms in the possession of the landlord, four rooms are practically of no use. The remaining four rooms in occupation of the landlord, whose family consists of ten members, could not be said to be sufficient for meeting this needs and requirements.

2. During the pendency of the appeal, an application for amendment made by the landlord was allowed and additional evidence was recorded. In the course of evidence it emerged that the daughter of the landlord and her husband had come to reside with him and that grandson has married and has two children. The wife of the landlord was a paralytic patient and was bed ridden. The Petitioner, failed to file an additional Written Statement despite adequate opportunity being granted by the Appellate Court. After the evidence of the landlord was recorded on 10th September 2003, the matter was adjourned for cross-examination by the Petitioner on several days, despite which, the opportunity to cross-examine the landlord was not availed of. On 17th January 2004, 26th March 2004, 31st June 2004 and 28th June 2004 adjournments were sought on behalf of the tenant. Eventually, the evidence of the Petitioner was closed on 26th July 2004. On 9th August 2004, the Petitioner remained absent when the Court was left with no option but to hear the appeal in the light of the evidence on the record. Having regard to the consistent failure of the Petitioner to avail of the opportunities granted by the

Appellate Court, I am of the view that it would manifestly inappropriate for the Court to remand the matter back to the First Appellate Court. The prayer for remand cannot be accepted.

3. All the facts have been duly considered and the evidence of the Appellate Court is borne out by the material on the record. No case for interference under Article 227 of the Constitution is made out. The Petition is dismissed. However, time to vacate the premises is granted to the Petitioner until 30th April 2006, subject to the filing of the usual undertaking within a period of three weeks from today.

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